

which a company has shewn itself more soulless. This rich, wealthy, corporation, doing business all over the world, comes here and says: 'Don't take from us what we agreed to pay in the case of the death of the assured, and deprive Mrs. Selick and her family of what we agreed to pay her should her husband die.' Gentlemen, I am perfectly satisfied to leave the result of this in your hands, and I ask—and I am not asking for sympathy—I ask you, upon the evidence I ask you, to answer every question, "no," making any explanation you think you should. I certainly ask you, gentlemen, as far as the materiality is concerned, so far as acting upon the policy by reason of the non-disclosure, I ask you to answer these questions, 'no.'"

Counsel for the defendant company took exception to these remarks; and the learned trial Judge, in charging the jury, said with reference to the observations complained of:—

"His remarks, perhaps I might characterise them as inflammatory statements, about this soulless corporation which hustles for insurance all over the world and take's people's money and then refuses to pay them, are remarks which I think entirely irrelevant to the issue which you and I are trying to dispose of, and are remarks which I hope you will put entirely out of your consideration when you come to deal with what I think, and what I have no doubt you will think, is the real matter in dispute between these parties."

Notwithstanding this caution, some consideration other than the evidence appeared to have influenced the jury to reach a conclusion wholly at variance with the evidence. If, upon the evidence, the Court could assume that 12 reasonable men could have reached the conclusion arrived at in this case, then the remarks of counsel to the jury of the nature here complained of might not warrant the Court in setting aside the jury's finding; but, the finding appearing, beyond reasonable doubt, to be unwarranted by the evidence, the Court must assume, in the absence of any other explanation, that it was arrived at because of the irrelevant and inflammatory observations complained of.

In the interest of justice, the verdict should not be allowed to stand. The findings and judgment should be set aside and a new trial ordered; the costs of the trial already had and of the appeal to be costs in the cause.

*Appeal allowed.*